HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 741 (S/S) year 2003

Viresh and others

Versus

Director, Local Bodies, Govt. of

Uttaranchal & another

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 27.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 741(S/S) 2003

(1) Viresh a/a 26 years S/o
Shri Subher Lal Kashipur District
Udham Singh Nagar.
(2) Smt. Mamta w/o Shri Rajendra
R/o Mohalla Maheshpura, Balmiki
Basti Kashipur, district Udham Singh
Nagar.
(3) Rajkumari W/o Shri Ganesh R/o
Mohalla Maheshpura Balmiki Basti
Kashipur district Udham Singh Nager … Petitioners

Vs

(1) Director , Local Bodies, Govt. of
Uttaranchal at Dehradun.
(2) Nager Palica Parishad, Kashipur, district
Udham Singh Nagar, through its Executive
Officer. ….Respondents

Counsel for the petitioner Shri . B.D.Upadhyaya

Dated:-27-11-2003

Hon'ble Rajesh Tandon J.

Heard Shri B.D.Upadhyaya counsel for the petitioner and Chief Standing Counsel for the respondent.

Rule, Respondents waive service. Both the parties agreed that the writ petition may be decided finally.

By the present writ petition the petitioners have prayed for the issue of a writ, order or direction in the nature of mandamus directing

the respondents to consider the case of the petitioners for appointment on the post of sweepers on the basis of the select list prepared by the duly constituted selection committee as well as for a direction for releasing the retirement benefits in favour of the petitioner.

Brief facts giving rise to the present writ petition are that the petitioners were working as sweepers in the office of the respondent No.2 from time to time on daily wager basis. It has been stated that in the year 1999 certain vacancies of sweepers fell vacant in the office of the respondent No.2.

The petitioners have submitted that for the purpose of regular appointments on those posts the names of the candidates were called from the employment exchange. The employment exchange sponsored the name of 222 candidates. Out of 222 candidates sponsored by the employment exchange 119 candidates appeared before the selection committee on 15.4.99. The selection committee selected 22 candidates for appointment on the post of sweepers out of which the candidates from serial no. 19 to 22 were placed in the waiting list.

At the time of the filing of the writ petition following order was passed on 1-8-2003.

> ***"Learned C.S.C. has accepted notice on behalf of respondents No.1 . Issue notice to respondent NO.2 he may file counter affidavit within a period of 3 weeks . List thereafter. In the Meantime if the petitioner makes respondent No.2, the respondent No.2 shall take decision on the representation or petitioner within a period of 3 weeks from the date of production of certified copy of this order.'***

Petitioners have stated that they appeared before the selection committee and they were placed at serial no. 20,21and 22 in the list of

selected candidates. The petitioners have further stated that that the recommendation of the selection committee was accepted for the appointment of sweepers in the officer of the respondent No. 2. Relevant paragraph to that effect is quoted below:-

" That the recommendation of the selection committee was accepted by the appointing authority and 18 persons were appointed as sweepers in the officer of the respondent No. 2 . The true copy of the proceeding of the selection committee is being filed herewith and marked as Annexure 1 to this writ petition."

However the petitioners have submitted that in the month of December 1999, on account of retirement of two persons, two posts of sweepers fell vacant. The petitioners have stated that instead of appointing the petitioners respondents have permitted the Health Inspector to appoint two persons. However, in 2002 as account of retirement 8 posts of sweepers fell vacant. Petitioners attracted the authorities. The averments to that effect is quoted below:-

" That in the year 2002 on account of retirements, etc. 8 posts of sweepers fell vacant in the officer of the respondent NO. 2. On felling of vacancies the petitioners approached to the respondent No.2 but no heed was paid on their request as such the petitioner no. 2 on 3-9-2002 and 20-12-2002 submitted representations to the District Magistrate and Commissioner to this effect but no any order was passed on said representations . The true copy of the representation dated 3-9-2002 and 20-12-2002 is being filed herewith and marked as Annexure 3 and 4 respectively to this writ petition."

Petitioners have further challenged that paragraph 16 and further Paragraph 17 is held as under:-

Paragraph- 16 " That the action of the respondents in appointing other persons on the vacant post without following the procedure of recruitment is absolutely illegal and bad in law."

Paragraph-17 " That the action of the respondents in not appointing the petitioners on the basis of the select list and appointing other persons who were not selected by the selection committee is in violation of the Article 14 and 16 of the Constitution of India."

The counsel for the petitioner has railed two fold points for consideration:-

(1) Instead of appointing the candidates from at the waiting list outsiders have been appointed.

(2) Neither the select list has exhausted nor any new list has been prepared.

Respondents are directed to consider the representation of the Petitioner on the aforesaid grounds within 6 weeks of the filing of the certified copy of the order.

Writ petition stands disposed of accordingly.

27-11-2003 **(Rajesh Tandon, J.)**

Mohit